IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 559 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.JAIN
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1.   Whether Reporters of Local Papers may be allowed
        to see the judgements? No

2.   To be referred to the Reporter or not? No

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3.   Whether Their Lordships wish to see the fair copy
        of the judgement? No

4.   Whether this case involves a substantial question
        of law as to the interpretation of the Constitution
        of India, 1950 of any Order made thereunder? No

5.   Whether it is to be circulated to the Civil
    Judge? No

STATE OF GUJARAT
Versus
    HIMATLAL AMRUTLAL PUJARA

Appearance:
        MR DA BAMBHANIA for Petitioners
        MR ND NANAVATY Sr.Advocate with MR SV RAJU for
        Respondent Nos. 1 to 6.
        MR TH SOMPURA ASSTT. GOVERNMENT PLEADER for
        Respondent No. 7

    CORAM : MR.JUSTICE R.R.JAIN
    Date of decision: 23/04/97

ORAL JUDGEMENT

  The order dated 9.3.1994 passed by the Urban Land
    Tribunal in Appeal No.Rajkot-6 of 1994 setting aside the

order of the Competent Authority passed on 31.12.1993 under Section 6 of the Urban Land (Ceiling & Regulation) Act, 1976 (the Ceiling Act for brief) has been challenged by the State of Gujarat under Articles 226 and 227 of the Constitution of India. Briefly stated, the facts giving rise to this case are as under:

2. Respondent No.1 Himatlal Amrutlal Pujara as Karta of HUF filled in form declaring the holding. While deciding the form, the Competent Authority allowed only two units and did not consider the claim of unmarried daughter who too is a member of HUF. Aggrieved by this order, the respondents preferred an appeal under Section 33 of the Ceiling Act. The Tribunal considering rival contentions and judgments of the Supreme Court as well as High Courts held that unmarried daughter is entitled to a share in the properties of HUF and therefore as member is entitled to one unit qua the holding under the Ceiling Act. Accordingly, the Tribunal set aside the order of the Competent Authority and allowed three units. Aggrieved by this order, the State of Gujarat has preferred this writ petition.

3. In this case there is no dispute that the land is held by HUF and both the parties are in agreement with this issue. However, the question arising for consideration is whether in case of a land held by HUF an unmarried daughter shall be considered as a member and be given an unit under the Ceiling Act? This question is no more a res integra since by catena of judgments the Apex Court has held that an unmarried daughter is a member of HUF and is entitled to her share as reported in AIR 1970 Supreme Court page 14 in the case of NARENDRANATH v. COMMISSIONER OF WEALTH TAX and as well as reported in AIR 1976 Supreme Court at page 109 in the case of SURJITLAL CHHABDA v. COMMISSIONER OF INCOME TAX. Even this court also in an unreported ruling in Special Civil Application No.12556 of 1994 (Coram: R.Balia, J.) has also taken similar view and has held that female members including unmarried daughters also are entitled to share when notionally a partition could have been taken place between coparceners. Thus, as regards the position of law, now the question is well-settled that in case of HUF an unmarried daughter has a share when the question of notional partition arises. In this case also, when the land is held by HUF on the day of enforcement of the Ceiling Act keeping in mind the concept of notional partition, an unmarried daughter shall have her share and is entitled to one unit qua the permissible holding under the Ceiling Act.

4. The Tribunal has rightly held so and has given additional unit for the unmarried daughter while calculating the permissible holding as well as surplus land. While doing so, the Tribunal has not committed any error of law or arbitrariness so as to warrant interference by this court while exercising writ jurisdiction.

5. In the result, I find no substance in this petition. The impugned order is completely in confirmity with law and does not call for any interference by this Court. Petition is rejected. Notice is discharged.

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